

AMENDED IN ASSEMBLY FEBRUARY 21, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 70

Introduced by Assembly Member Jones

December 4, 2006

An act to add Chapter 6 (commencing with Section 8460) to Part 2 of Division 5 of Section 8307 to the Water Code, relating to flood liability.

LEGISLATIVE COUNSEL'S DIGEST

AB 70, as amended, Jones. Flood liability.

Existing law, under various circumstances, subjects a public entity or an employee of a public entity to liability for property damage or personal injury caused by or from floods or floodwaters.

~~This bill would subject, in addition to any other legal liability imposed by law, a city or county to joint liability, whether or not the city or county directly participates in the operation or maintenance of a flood control project, for property damage sustained in a flood by approving new development in an undeveloped area that is protected by a project levee where flood levels are anticipated to exceed 3 feet for a 200-year flood event, as specified.~~

This bill would provide that liability for property damage or personal injury shall rest jointly with all state and local public entities that participate in the design, construction, operation, or maintenance of a flood control project when the flood control project fails to function as intended and causes property damage or personal injury in areas historically subject to flooding. The bill would provide that the state is entitled to a right of contribution against any local public entity whose actions, or failure to act, contributes to the failure of a flood control

project when that failure causes property damage or personal injury and a judgment has been entered against the state. The bill would subject a local public entity to joint liability and the state's right of contribution to the extent that the local public entity increases the state's exposure to liability for property damage by approving new development in a previously undeveloped area, as defined.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. (a) The Legislature finds and declares that recent*
2 *court rulings have upheld liability on the part of the state under*
3 *theories of inverse condemnation or various tort causes of action*
4 *for property damage or personal injury caused by the failure of*
5 *state and local flood control projects.*

6 *(b) It is the intent of the Legislature that the state and local*
7 *public entities share liability for property damage or personal*
8 *injury associated with a failure of a flood control project.*

9 *SEC. 2. Section 8307 is added to the Water Code, to read:*

10 *8307. (a) If a flood control project fails to function as intended,*
11 *and causes property damage or personal injury in areas*
12 *historically subject to flooding, liability for that damage or injury*
13 *shall rest jointly with all state and local public entities that*
14 *participate in the design, construction, operation, or maintenance*
15 *of the flood control project. Liability shall be equitably apportioned*
16 *according to the extent to which the public entity has the power*
17 *to control and correct the aspect of the flood control project that*
18 *causes the failure and resulting property damage or personal*
19 *injury.*

20 *(b) If the failure of a flood control project causes property*
21 *damage or personal injury, and a judgment has been entered*
22 *against the state or a state agency determined to be liable for the*
23 *damage or injury, the state is entitled to a right of contribution*
24 *against any local public entity whose actions, or failure to act,*
25 *contributes to the failure of the flood control project. The right of*
26 *contribution shall apply whether the action against the state or*
27 *state agency is brought in tort or inverse condemnation.*

28 *(c) (1) Whether or not a local public entity directly participates*
29 *in the operation or maintenance of a flood control project, it is*

1 *subject to joint liability and the state's right of contribution to the*
2 *extent that the local public entity increases the state's exposure to*
3 *liability for property damage by approving new development in a*
4 *previously undeveloped area.*

5 (2) *For the purpose of this subdivision, an undeveloped area*
6 *means an area devoted to "agricultural use," as defined in Section*
7 *51201 of the Government Code, or "open space land," as defined*
8 *in Section 65560 of the Government Code.*

9 ~~SECTION 1. Chapter 6 (commencing with Section 8460) is~~
10 ~~added to Part 2 of Division 5 of the Water Code, to read:~~

11
12 ~~CHAPTER 6. FLOOD LIABILITY~~
13

14 ~~8460. (a) In addition to any other legal liability imposed by~~
15 ~~law, a city or county is subject to joint liability, whether or not the~~
16 ~~city or county directly participates in the operation or maintenance~~
17 ~~of a flood control project, for property damage sustained in a flood~~
18 ~~by approving new development in an undeveloped area that is~~
19 ~~protected by a project levee where flood levels are anticipated to~~
20 ~~exceed three feet for a 200-year flood event based on the 2002~~
21 ~~comprehensive study by the United States Army Corps of~~
22 ~~Engineers or as that determination may be subsequently revised~~
23 ~~by the department or the Reclamation Board.~~

24 ~~(b) This section does not prevent a local public entity from~~
25 ~~approving new developments in an undeveloped area.~~

26 ~~(c) For purposes of this section, the following terms have the~~
27 ~~following meanings:~~

28 ~~(1) "Project levee" means any levee that is part of the state and~~
29 ~~federal flood control works, lands, programs, plans, policies,~~
30 ~~conditions, and mode of maintenance and operations within the~~
31 ~~Sacramento River Flood Control Project described in Section 8350,~~
32 ~~and of flood control projects in the Sacramento River and San~~
33 ~~Joaquin River watersheds authorized pursuant to Article 2~~
34 ~~(commencing with Section 12648) of Chapter 2 of Part 6 of~~
35 ~~Division 6.~~

36 ~~(2) "Undeveloped area" means an area devoted to agricultural~~
37 ~~use, as defined in Section 51201 of the Government Code, or~~

- 1 ~~open-space land, as defined in Section 65560 of the Government~~
- 2 ~~Code.~~

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